

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-106

DATE OF INTRODUCTION:

January 8, 2002

SPONSOR:

Assemblyman Thompson

DATE OF RECOMMENDATION:

March 26, 2002

IDENTICAL BILL:

COMMITTEE:

Assembly Environment and Solid Waste

DESCRIPTION:

This Bill exempts sales of returnable plastic containers and pallets from sales and use tax.

ANALYSIS:

There is a concern that the granting of an exemption for the sale or use of returnable plastic containers and pallets is contrary to the intent of the original exemption which exempted wrapping supplies when such use is incidental to the delivery of personal property. This Bill will drastically broaden the exemption by completely removing the limitations to containers that are non-returnable and used in a manner that is incidental to delivery. This proposal will also vastly expand the recent amendment that exempts "containers" used in a farming enterprise.

Under the current statute, wrapping supplies or containers used in the delivery of property are exempt. Thus, returnable wrapping supplies including pallets that are either internally used by a business or returned once delivery is completed are subject to tax. The proposed exemption for returnable plastic containers and pallets does not require that they be used in the "delivery" of property. The actual language of the Bill contains no limitation that would limit the exemption to commercial transactions. The proposed exemption could apply to a vast variety of containers and pallets sold for purely personal or non-commercial uses such as residential garbage cans, refrigerator containers for home use, pallets used to store items in a home basement. Therefore, if the Bill is intended to provide a tax benefit to businesses that use such containers, it is worded too broadly, since it could extend the benefit to both private and commercial purchasers and users of the containers. The language of the Bill should be amended to specify that the exemption will apply only to purchases for commercial use by adding "incidental to the delivery of tangible personal property".

This Bill results in disparate treatment for the purchase of non-plastic containers and pallets with no apparent justification for such distinction. The Commission finds no overarching public policy reasons to provide a broader exemption for returnable plastic containers and pallets than for all other types of containers and wrapping and packing supplies used in commerce. There is no apparent compelling argument for such a broadly applicable exemption for returnable plastic containers and pallets. The language of the Bill could also be improved by removing the word “plastic” and having the exemption apply to all returnable containers and pallets regardless of the material. The Commission did express a preference to such an approach and might be inclined to support a bill with the above changes.

In addition, the expanded exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair”. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for returnable plastic containers and pallets would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue to the State leaves the State to find other means of generating the revenue lost as a result of an expanded exemption.

RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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